

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 300 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and  
MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SARASPUR MILLS LTD

Versus

COMMISSIONER OF INCOME TAX

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Appearance:

MR JP SHAH for Petitioner

MR MIHIR THAKORE for Respondent No. 1

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CORAM : MR.JUSTICE S.M.SONI and  
MR.JUSTICE Y.B.BHATT

Date of decision: 05/10/96

ORAL JUDGEMENT

The following question is referred to us at  
the instance of the assessee:

" Whether on the facts and in the  
circumstances of the case, the Tribunal  
was justified in disallowing the claim of  
the deduction of interest of  
Rs.8,841/-paid to the Income-Tax  
Department u/s.220(2)?"

The claim of the assessee for deduction of  
interest paid to the Income-tax Department under section

220(2) of the Income-tax Act is disallowed. The assessee is not entitled to such deduction as held in the case of SAURASHTRA CEMENT AND CHEMICAL INDUSTRIES LTD. VS. COMMISSIONER OF INCOME-TAX, 213 I.T.R. p.523. The relevant observation at page 529-530 reads as under:

"The argument apparently appears to be facile but does not stand scrutiny of reason. The mere fact that the interest on the late payment of the tax is compensatory does not make it an expense wholly or exclusively carried out for the purpose of business. The essence of Sec.37 of the Act is that such expenses are wholly laid out or incurred for the purpose of business. If the preliminary liability to be discharged by the assessee is not allowable as expenses laid out or incurred for the purpose of business, ordinarily the interest paid thereon also cannot be considered as expenses laid out or incurred wholly for the purpose of the business. In the case of Prakash Cotton Mills[1993] 201 ITR 684, the Supreme Court was considered with the interest payable by the assessee on the demand created under the Bombay Sales Tax Act, 1959. The liability incurred on account of sales tax is deductible and any amount paid as interest in the nature of compensation for the late payment of such liability partakes of the character the original liability and is allowable. So also is the interest paid on the late payment of excise duty or contribution to the provident fund. In each case, the amount paid towards the excise duty or contribution to the provident fund are the expenses allowable to be deducted from the gross profit and, therefore, any amount paid for compensation on delayed payment to the recipient also becomes allowable under section 37(1) of the Act. However, in the present case, the interest is payable on the personal liability of the assessee of the income-tax which is a direct tax and is not a part of the business expenditure. In this connection, it may further be noticed that interest on money borrowed for the payment of the tax was held to be not an allowable expenditure. Reference in this connection be made to the decision of the Supreme Court in the case of Padmavati Jaikrishna (Smt.) v. Addl.CIT [1987] 166 ITR 176. The Supreme Court, affirming the decision of this court in Padmavati Jaykrishna(Smt.) v. CIT [1975] 101 ITR 153 disallowing the claim for deduction of interest on the amounts borrowed to pay taxes and annuity deposits, held as under (at page 179):

" We are inclined to agree with the High Court that so far as meeting the liability of income-tax and wealth-tax is concerned, it was indeed a personal one and

payment thereof cannot at all be said to be expenditure laid out or expended wholly and exclusively for the purpose of earning income."

In view of these observations, we answer the question referred to us in the affirmative in favour of the revenue and against the assessee. Reference stands disposed of accordingly.

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